83-936

In The

Supreme Court of the United States

October Term 1983

No.

ELLEN HAWES for herself and in representation of the minor MARIA CHRISTINA HAWES and ANNA FRANCISCA HAWES,
Petitioners,

-against-

RAMON J. ABARCA, CARLOS ALVAREZ, JR., IRVING HERMAN BASSIN, FRANCISCO BADRENA, SANTIAGO COLL CAMALEZ, ARTURO COSTA, NOEL JELAPLACE GERARD, MIGUEL F. ESTEVA, HECTOR GANDIA, JOSE G. GONZALEZ, JAIME GONZALEZ OLIVER, ENRIQUE GRAU ESTEBAN, RAYMOND HERNANDEZ, DONALD JAMES KEVANE, CLAUDE GRENET, PATRICK H. GRAY, HANNY STUBBE LOPEZ, CARLOS MATOS, RODOLFO MEDIAVILLA, FRANK A. MOLTHER, ALLEN RAPAPORT, NELSON LUGO RIGAU, IDALIE SANTAELLA, HILDA SOLTERO, JOHN F. TOMLINSON, JOSE D. TARGA, ARTURO VILLAR, JOSE ZEQUEIRA, ROBERT WILSON, DAVID A. ROESKE, WILLIAM NAVIERA, and AGUSTINE CELAGA,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR CERTIORARI

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Questions Presented for Review

1. Whether the District Court violated FRCP 56(c): That court, in a summary judgment, conferred corporate immunity upon the 32 individual defendants and dismissed the within complaint against them despite the fact that those defendants had failed to meet the burden of proof (laid upon them by FRCP 56[c]) to show there was no genuine issue of material fact and submitted no evidence that a corporation under which they could seek such immunity existed under the laws of Puerto Rico.

2. Whether the ruling below deprived plaintiffs of due process of law under Art. 1 § 10 of the Constitution and the Fourteenth Amendment: The District Court has impaired the obligation of contract -- established by the laws of Puerto Rico which define corporate and individual liability

re torts and set out the rules under which corporate existence is defined -- by conferring corporate immunity upon defendants who submitted no evidence that they were protected by such corporate immunity.

List of Parties

The Petitioners herein are those listed in the caption on the cover.

The Respondents listed on the cover are those who received summary judgment as listed in the Partial Judgment of Judge Cerezo dated August 26, 1982 and affirmed by the United States Court of Appeals for the First Circuit (Appendix A).

The complete list of the Defendants in the courts below is as follows:

CLUB ECUESTRE EL COMANDANTE, PUERTO RICO EQUESTRIAN FEDERATION, FEDERACION PUERTORRIQUERA DE DEPORTES ECUESTRES, INC., CLUB ECUESTRE METROPOLITANO, INC., MUNICIPALITY OF SAN JUAN, PUERTO RICO, BRITISH AMERICA ASSURANCE COMPANY, LUCY MANGUAL, individually and as parent and representative of the minor VALERIE RHODES, WILFREDO PEREZ, GERMAN RIECKEHOFF, PEDRO RAMOS, IVAN SANCHEZ, RAMON J. ABARCA, CARLOS ALVAREZ, JR., IRVING HERMAN BASSIN, FRANCISCO BADRENA, SANTIAGO COLL CAMALEZ, ARTURO COSTA, NOEL JELAPLACE GERARD, MIGUEL F. ESTEVA, HECTOR GANDIA, JOSE G. GONZALES, JAIME GONZALES OLIVER, ENRIQUE GRAU ESTEBAN, RAYMOND HERNANDEZ, DONALD JAMES KEVANE, CLAUDE GRENET, PATRICK H. GRAY, HANNY STUBBE LOPEZ, CARLOS MATOS, RODOLFO MEDIAVILLA, FRANK A. MOLTNER, WILFREDO J. PEREZ, ALLEN RAPAPORT, NELSON LUGO RIGAU, IVAN SANCHEZ, IDALIE SANTAELLA, HILDA SOLTERO, JOHN F. TOMLINSON, JOSE D. TARGA, ARTURO VILLAR, JOSE ZEQUEIRA, ROBERT WILSON,

DAVID A. ROESKE, WILLIAM NAVEIRA, AGUSTINE CELAGA, JOHN DOE ONE THROUGH JOHN DOE ONE HUNDRED, INCLUSIVE, and STEPHANY ZACHARY.

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IN THE
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No.

ELLEN HAWES for herself and in representation of the minor MARIA CHRISTINA HAWES and ANNA FRANCISCA HAWES,

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PETITION FOR CERTIORARI

Citation to Opinions

The opinion of July 20, 1983, of the United States Court of Appeals for the First Circuit in question here affirms the District Court's partial summary judgment in

favor of the thirty-two defendants; it is reproduced in Appendix A along with the judgment. The order denying a Rehearing and Rehearing En Banc is reproduced in Appendix C.

The decision and order of Judge Consuelo Cerezo of the United States District Court for the District of Puerto Rico of August 20, 1982, granting the summary judgment and the order and opinion of Judge Cerezo dated February 9, 1982 are reproduced in Appendix B along with the order of Judge Jaime Pieres granting a certificate permitting the appeal pursuant to FRCP 54(b).

Jurisdictional Grounds for Review

The judgment of the First Circuit Court of Appeals was entered on July 20, 1983, Appendix A.

A timely petition for rehearing and suggestion for rehearing en banc was denied on September 9, 1983, Appendix C.

The jurisdiction of this Court is conferred by 28 USC § 1254(1).

Constitutional Provisions and Statutes Involved

This case involves Federal Rule of Civil Procedure 56, Art. I §10 of the Constitution of the United States and the Fourteenth Amendment to that Constitution. In addition the case also involves sections from the General Corporation Law of Puerto Rico, Title 14, §§ 451, 1101, 1102, 1103, 1104, 1105, 1106, 1802 and 2301.

These provisions are set out verbatim in Appendix D.

Statement of the Case

Plaintiffs below (the widow and two

daughters) of a decedent, sue on behalf of themselves and the decedent who was injured while a spectator at a horse show in San Juan, Puerto Rico in April, 1973. A horse and rider jumped out-of-bounds onto the decedent's back rendering him a quadriplegic. Plaintiffs' claim is predicated on the negligence of defendants and on a Puerto Rican code section providing statutory liability for the "use" of animals. The defendants dismissed from the case as a result of the summary judgment are thirty-two individual defendants sued as members of an unincorporated association (Club Ecuestre el Comandante) which sponsored the horse show event. There remain in the case other named defendants (three associations, eight individual defendants and the corporation -- Club Ecuestre Metropolitano, Inc.) Plaintiffs have lost,

however, the liability of the thirty-two individuals who sponsored the event and in their place are offered by the courts a corporation of doubtful existence under Puerto Rican law.

Plaintiffs' decedent died of his injuries in June 1975, having then incurred more than $100,000 in medical bills. Added to other special damages, the decedent's earning power and other expenses, this brought plaintiffs' claim for special damages to $400,000. Plaintiffs claim, in addition, general damages of more than $3,000,000.

The thirty-two individual respondent-defendants twice before unsuccessfully petitioned the District Court under FRCP 56 for a summary judgment in their favor on the same claim that they had no individual liability because their unincorporated

association, Club Ecuestre el Comandante, was Club Ecuestre Metropolitano, Inc. under a different name. Plaintiff-petitioners opposed their third motion on the ground that the individual respondents could not escape their personal liability behind a corporate veil. There was no corporate charter for the Club Ecuestre el Comandante; it had defaulted and not answered the complaint (nor amended complaint) on which issue was joined. Nor had Club Ecuestre Metropolitano, Inc. complied in any way with the laws of Puerto Rico providing for the establishment, existence and operation of a corporation in that jurisdiction subsequent to the filing of its charter.

The District Court ruled that the showing made by respondents met their burden of proof entitling them to summary judgment under Rule 56 even though such proof con-

sisted of nothing more than an affidavit alleging a resolution at a private meeting of directors of Club Ecuestre Metropolitano, Inc., never elsewhere recorded, nine years before the decedent's accident to change the name of the corporation to Club Ecuestre el Comandante.

In anticipation of its final ruling in favor of respondents, the District Court took a step unusual in a summary-judgment proceeding: it invited the respondents to offer "properly authenticated supplemental documentary evidence and affidavits to establish the alleged continuity of Metropolitano, Inc. under the name of "Comandante", adding ". . . the Court is interested in examining Metropolitano Inc.'s dealings with third parties and its operations from 1964 up to the time when plaintiffs' injury occurred" (44a).

The respondents produced no minutes of meetings of either entity later than 1966; no third party affidavit; no record of any filing of papers in compliance with the Puerto Rico statutes empowering corporations, and no evidence whatever of any purported corporate action by either entity subsequent to 1969.

The District Court held nonetheless that respondents had met the FRCP 56(c) burden of proof and that plaintiffs had not shown "how this new name [Ecuestre] was fraudulently used to shield defendants from liability".

The Court of Appeals affirmed on the grounds that plaintiffs had not shown that they had been harmed "by the corporation's [sic] use of an unauthorized name" and that a corporation (Club Ecuestre Metropolitano, Inc.) existed to bear any

liability found.

As to these rulings, plaintiffs here contend the courts below have failed to lay upon respondents their FRCP 56 burden of proof to show that any corporate entity was in existence at the time of decedent's injury to relieve the thirty-two respondents of their personal liability. Further, plaintiffs contend that the ruling decreeing that Club Ecuestre Metropolitano, Inc. could operate under another name violates the public policy under which corporations are chartered -- that corporations may be chartered to insulate individuals against liability only providing the rules set up for such corporate existence (by state or federal law) are followed by the parties seeking immunity. As a result, plaintiffs-petitioners are left with no satisfactory recourse for

damages where they are suing for more than $3,000,000 in an action brought against financially responsible individuals who actively participated in sponsoring the horse show event.

Both courts -- the District Court and the Court of Appeals -- have sidestepped the plain requirement of Federal Rule of Civil Procedure 56 that the moving party sustain the burden of proof and held for respondents notwithstanding the absence of such proof ab initio and despite the inadequacy of the evidence proffered by respondents upon invitation from the court that any valid corporation was in existence at the time of decedent's injury to limit the individual liability of the 32 respondents. This Court has consistently maintained, in its overall supervision of the administration

of justice in the federal courts, its own considered interpretation of the federal rules -- particularly in their application to summary judgment.

Moreover, the ruling of the courts below further disregarded the corporate law of Puerto Rico which in essence establish a contract with its citizens that reliance can be put on the corporate entities maintained in compliance with the law both by persons protected by it and by others looking to its responsibility. When the law is not complied with, a person contracting with an entity claiming to be a corporation or (as in this case) injured as the result of a tort of such claimed entity, has a right to look to individual responsibility. This public-policy consideration requires this Court's application of constitutional law to the

ruling below.

Reasons for Granting the Writ

Point I

THE COURTS BELOW DISREGARDED THIS COURT'S DIRECTION TO DISTRICT COURTS IN ADICKES v. KRESS, 398 U.S. 144 THAT THE PARTY MOVING FOR SUMMARY JUDGMENT MUST INITIALLY DEMONSTRATE THE ABSENCE OF ANY GENUINE ISSUE OF FACT BEFORE THE OTHER PARTY HAS ANY OBLIGATION TO PRESENT CONTRADICTORY EVIDENCE -- AND THAT THE ISSUES MUST BE VIEWED IN THE LIGHT MOST FAVORABLE TO THE PARTY OPPOSING THE MOTION.

Plaintiffs brought the thirty-two individual respondents into court to answer to their personal liability for the injury and death of plaintiffs' decedent. To escape that liability under protection of a corporate entity -- and to do so especially under a motion for summary judgment -- they had the burden of proof of the existence of a corporate

entity.

The District Court found that, even though it was not disputed that there was no registered corporation under the name of which the thirty-two individual defendants purported to act -- Club Ecuestre el Comandante -- nor that the horse show where the event occurred was indeed sponsored by that very Club Ecuestre el Comandante, the members of the association were shielded by the corporate immunity of a corporation called from the shadows of an unrecorded past by the name Club Ecuestre Metropolitano, Inc.

The legal issue improperly defined by both courts below was whether plaintiffs were "harmed" or "defrauded" by the use of an unauthorized name by a corporation which unilaterally and with notice to no one as required by law, proceeded to use a

name different from that under which it was incorporated. Plaintiffs put in no affidavit testimony asserting such "harm". They relied upon the clear requirements of the law with which defendants were compelled to comply: that they prove they were acting under the limitation of their personal liability by a corporate entity enjoying valid existence under the laws of Puerto Rico. Plaintiffs are indeed "harmed", however, by losing their recourse to the assets of the individual members of the unincorporated association.

The courts ignored the fact that Club Ecuestre el Comandante did not regard itself as a corporate entity and was in default in answering the complaint, that neither it nor the alleged corporation to which the trial court encouraged respondents to trace its lineage (Club Ecuestre

Metropolitano, Inc.) had complied with the sections of Puerto Rico laws which specify in detail the measures necessary to create a corporate entity, keep it in existence and, incidentally, to change its name. See Title 14, Laws of Puerto Rico.

While evidence was adduced that charter papers had been filed in 1963 for Club Ecuestre Metropolitano, Inc. in compliance with Title 14 §451 (51a, 52a), there was no showing that any amendment to the corporate charter changing the corporate name had been filed in compliance with Title 14 §1802 (55a). Nor did Club Ecuestre el Comandante claim or reflect corporate status in its name as required by Title 14 §1102 (53a). No evidence was shown for a corporation under either name of the annual renewal of the

corporate license required by Title 14, §451; of the holding of regular annual meetings as required by Title 14 §1701 (58a); nor of the filing of annual reports and balance sheets as required by Title 14 §2301 (59a). Such evidence was not submitted by respondents even when -- in a preliminary ruling unusual in and foreign to the very spirit of a summary judgment proceeding -- respondents were invited by the trial court, which found their evidence insufficient, to produce evidence of ". . . the alleged continuity of Metropolitano Inc. [sic] under the name of Comandante [sic]" (44a).

The papers submitted in augmentation of the record by the movants showed no minutes of meetings of the directors or members of this purported changed-name corporation after 1966; the last bank

resolution bearing the name of Club Ecuestre el Comandante (no relationship there indicated to Club Ecuestre Metropolitano, Inc.) bore the date of March 20, 1969. The accident giving rise to the liability occurred in 1973. In sum, none of the provisions of law set forth in Title 14 of the Public Corporation Law (Appendix D) were complied with for either entity after the original filing of the certificate of incorporation by Club Ecuestre Metropolitano, Inc. in 1963.

The courts below fell, therefore, doubly into error when they held that plaintiffs were required to show how they had been defrauded by the parading of a non-existent corporation under another name which, on its face, was not in compliance with Puerto Rican law. Respondents plainly had the burden of proof under

FRCP 56 to show they were protected by the existence of a valid corporate entity under any name.

The courts below have thus completely failed to place the initial burden of proof upon the movant for summary judgment under this Court's holding in Adickes v. Kress, 398 U.S. 144, 157-159 (1970). This Court held that where movant could not establish that there was no factual issue concerning a material fact, no summary judgment could be obtained. The courts below violated the rule of Adickes as well as United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

Indeed it was argued in the court below that the proof adduced established that movants had woefully failed to show a corporate existence and that summary judg-

ment if any should have been granted to plaintiffs-petitioners.

Point II

THE DISREGARD BY THE COURTS BELOW OF THE PROVISIONS OF THE CORPORATE LAW OF PUERTO RICO IN RULING (AGAINST THE PROVISIONS OF THAT LAW) THAT A MERE ASSOCIATION WAS A CORPORATION, IMPAIRED THE OBLIGATION OF CONTRACT UNDER ART. I §10 OF THE UNITED STATES CONSTITUTION AND THE FOURTEENTH AMENDMENT; PETITIONERS WERE ENTITLED TO RELY ON THESE CONSTITUTIONAL PROVISIONS AND THE LAWS OF PUERTO RICO IN A LAWSUIT BASED ON TORT LIABILITY.

The charter of a corporation is a contract between the state and the corporation; the public is entitled to rely on the provisions of that contract. See Dartmouth College v. Woodward, 4 Wheat. 518 (1819), cf. West River Bridge Co. v. Dix, 6 How. 507 (1848) (upholding the right of eminent domain of the sovereign government in the public necessity as a reason-

able exception). This Court has more recently updated the significance of the ruling in the Dartmouth College case in United States Trust Company v. New Jersey, 431 U.S. 1, 17 (1976). There this Court said that the contract clause (Art. I § 10) limits the power of the states to modify their own contracts as well as to regulate those between private parties. That a state creates a corporation and may repeal its charter does not give such state (nor a court interpreting state law) the authority to impair the obligation of contract once created by the state. See Curran v. Arkansas, 15 How. 304, 320, 321 (1853). The courts in ruling in the instant case were exercising state action. See Chicago v. Sheldon, 9 Wall. 50, 55, 56 (1879).

No rule of either legislature or the

judiciary can impair the obligation of contract. Coombes v. Getz, 295 U.S. 434, 442 (1932). In Coombes the petitioner was a third person claiming a right vested by the corporation law of California and this Court there said ". . . neither vested property rights nor the obligation of contracts of third persons may be destroyed or impaired." The provisions of statutes when accepted as the basis for action by individuals or corporations become contracts between such individuals and the state within the protection of the federal constitution as to the impairment of contracts. See American Smelting Co. v. Colorado, 204 U.S. 103 (1907); Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 100 (1938). This Court held there that it "will examine into the existence and nature of the contract" set up

by the legislation. In this case this Court should look to the statutory requirement for the existence of corporate liability which was established to authorize causes of action for liability for tort as well as contract.

The courts below have disregarded herein the specific provisions in the statutes of Puerto Rico setting forth the requirements for corporate existence and therewith have burked the rights upon which individuals dealing with such corporations are entitled to rely.

Petitioners had a right to rely on the provisions of the corporation law and respondents were obliged to show they had complied with those provisions in asserting that they were protected by a corporation from exposure to individual liability. The defendants were all members of an unincor-

porated association individually liable for torts committed under their sponsorship. Those individuals had no right (without complying with the law respecting corporations) to insulate their liability by asserting the existence of a corporation, the existence of which they could not adequately establish to justify the rendering of a summary judgment.

There is nothing in the record before the courts below establishing that Club Ecuestre Metropolitano, Inc. was in existence and that it conformed to Puerto Rican law at the time of the accident in 1973. There were no records produced by the moving parties that either Club Ecuestre Metropolitano, Inc. or Club Ecuestre el Comandante had complied with any of the sections of Title 14 of the General Corporation Law of Puerto Rico set

forth in Appendix D except that Club Ecuestre Metropolitano, Inc. had filed its certificate under § 451 in 1963. Thereafter it did not comply.

The District Court itself was in doubt on this question when it made its unusual request for additional evidence to support its intention to render a summary judgment for the respondents. That court, by its amiable acceptance of the inadequate evidence thereafter proffered by respondents, has now impaired the obligation of contracts protected under Article I §10 of the Constitution.

Compliance with the law of corporations as legislated by the states is fundamental to the whole concept of the corporation as an insulator to individual liability. Similarly the name the corporation bears also defines its existence. See

American Steel Foundries v. Robertson, 269 U.S. 312, 380 (1926); cf. Brunswick Corp. v. Waxman, 459 F. Supp. 1222, 1228, 1229 (E.D.N.Y. 1978) affd. 599 F.2d 34 (2 Cir. 1979).

Here, again, the error of the courts below is amplified by their holding that plaintiffs were required to show how they had been defrauded "by the corporation's [sic] use of an unauthorized name". They stand defrauded by the impairment of the obligation of contract that has been sanctioned by the rulings of the courts below.

The rulings of the courts below deny petitioners their rights under Art. I § 10 of the Constitution as applied by the Due Process Clause of the Fourteenth Amendment.

Conclusion

This Court should grant certiorari to review the decision of the court below.

Respectfully submitted,

Eleanor Jackson Piel
Attorney for Petitioners

Demetrio Fernandez Quinones,
Of Counsel

APPENDICES

APPENDIX A

Decision of the United States Court of Appeals for the First Circuit Affirming Partial Summary Judgment of Judge Cerezo of August 26, 1982

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 82-1742

JOHN HAWES, ET AL.,
Plaintiffs, Appellants,

v.

CLUB ECUESTRE EL COMANDANTE, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Carmen Consuelo Cerezo, U.S. District Judge]

Before Coffin and Breyer, Circuit Judges, and Re,* Judge.

Eleanor Jackson Piel, with whom Demetrio Fernandez Quinones was on brief, for appellants.

Harry A. Ezratty and Lawrence E. Duffy, with whom Francisco Ponsa-Feliu, Francisco Ponsa-Flores, and Edda Ponsa-Flores were on brief, for appellees.

July 20, 1983

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* Of the United States Court of International Trade, sitting by designation.

Appendix A

Per Curiam. Appellants challenge the decision of the United States District Court for the District of Puerto Rico granting summary judgment to thirty-two individual defendants on the ground that the defendants are not personally liable for an injury allegedly caused by the corporation of which they were members. Confusion regarding the validity of the corporate status of the organization has been generated by the fact that although the corporation is registered in the State Department of Puerto Rico under the name Club Ecuestre Metropolitano, Inc., the club has operated since 1964 under the name of Club Ecuestre El Comandante.

On the basis of affidavits and other evidence produced by defendants, the district court concluded that Club Ecuestre

Appendix A

El Comandante was simply the continuation of the corporate activities of Club Ecuestre Metropolitano under an unauthorized name and that the corporate existence had continued at least until the time of plaintiffs' decedent's injury. Unable to discover any evidence that plaintiffs were misled or harmed in any way by the corporation's use of an unauthorized name and in light of the fact that if liability is found, the corporation will bear it, the court granted defendants' motion for summary judgment.

In opposing the motion for summary judgment, appellants offered no evidence suggesting a genuine issue of fact regarding the continuation of the corporation's existence under an unauthorized name. At oral argument, counsel for appellants agreed

that the key issue is whether a corporation operating under an unauthorized name can retain the benefit of limited liability for its members. Because we find the reasoning of the district court on this issue sound, we affirm on the basis of the February 9, 1982 and August 26, 1982 opinions of that court.

Appendix A

Judgment of the United States Court of Appeals for the First Circuit dated July 20, 1983, Affirming Partial Summary Judgment of Judge Cerezo of August 26, 1982

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 82-1742

JOHN HAWES, ET AL.,
Plaintiffs, Appellants,

v.

CLUB ECUESTRE EL COMANDANTE, ET AL.,
Defendants, Appellees.

JUDGMENT

Entered July 20, 1983

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argues by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:
Francis P. Scigliano
Clerk.

[cc: Ms. Piel and Mr. Ezratty.]

APPENDIX B

Order of Judge Cerezo dated August 26, 1982 Granting Partial Summary Judgment to 32 Individual Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
(CIVIL 74-447)

ELLEN HAWES, individually, and in representation of the minor MARIA CHRISTINA HAWES, ANNA FRANCISCA HAWES, individually, succession JOHN HAWES composed by MARIA CHRISTINA HAWES, represented by her mother ELLEN HAWES and ANNA FRANCISCA HAWES

Plaintiffs

vs

CLUB ECUESTRE EL COMANDANTE, PUERTO RICO EQUESTRIAN FEDERATION, FEDERACION PUERTORRIQUERA DE DEPORTES ECUESTRES, INC., CLUB ECUESTRE METROPOLITANO, INC., MUNICIPALITY OF SAN JUAN, PUERTO RICO, BRITISH AMERICA ASSURANCE COMPANY, LUCY MANGUAL, individually and as parent and representative of the minor VALERIE RHODES, WILFREDO PEREZ, GERMAN RIECKEHOFF, PEDRO RAMOS, IVAN SANCHEZ, RAMON J. ABARCA, CARLOS ALVAREZ, JR., IRVING HERMAN BASSIN, FRANCISCO BADRENA, SANTIAGO COLL CAMALEZ, ARTURO COSTA, NOEL JELAPLACE GERARD, MIGUEL F. ESTEVA,

Appendix B

HECTOR GANDIA, JOSE G. GONZALEZ, JAIME GONZALES OLIVER, ENRIQUE GRAU ESTEBAN, RAYMOND HERNANDEZ, DONALD JAMES KEVANE, CLAUDE GRENET, PATRICK H. GRAY, HANNY STUBBE LOPEZ, CARLOS MATOS, RODOLFO MEDIAVILLA, FRANK A. MOLTNER, WILFREDO J. PEREZ, ALLEN RAPAPORT, NELSON LUGO RIGAU, IVAN SANCHEZ, IDALIE SANTAELLA, HILDA SOLTERO, JOHN F. TOMLINSON, JOSE D. TARGA, ARTURO VILLAR, JOSE ZEQUEIRA, ROBERT WILSON, DAVID A. ROESKE, WILLIAM NAVEIRA, AGUSTINE CELAGA, JOHN DOE ONE THROUGH JOHN DOE ONE HUNDRED, inclusive, and STEPHANY ZACHARY

Defendants

O R D E R

Having considered various pending matters the Court hereby rules as follows:

I - Individual club member defendants' Summary Judgment against plaintiff:

-On February 10, 1982 the Court discussed the individual club member defendants' (defendants) Motion for Summary Judgment and

determined that the sole issue was whether Club Ecuestre Metropolitano, Inc. continued its corporate operations as Club Ecuestra El Comandante and if the use of this misnomer was done to perpetrate some fraud or shield liability. Since the issues had not been previously spelled out until our Order of February 10, 1982, in the interest of fairness, we granted to all parties an additional term to file supplemental documents to address this issue.[1/] Defendants filed three affidavits, corporate minutes and corporate resolutions. These indicate that in 1964 Club Ecuestre Metropolitano, Inc. changed its name to Club Ecuestre El Comandante because it was using the facilities of the racetrack El Comandante. Ac-

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1/ See footnotes at end of this Order.

cording to these documents, Club Ecuestre Metropolitano, Inc. did not cease to exist but rather continued its operations and business with third parties under the name of Club Ecuestre El Comandante. Plaintiffs have opposed the sufficiency of said supplementary documents by asserting that they do not meet the requirements of our order. Plaintiffs contend that the statements in the affidavits that mention the dealings of Club Ecuestre Metropolitano, Inc. during the time of the accident as Club Ecuestre El Comandante are self serving and conclusory statements. However, plaintiffs have not filed any counteraffidavits or other documentary evidence to contradict defendants' sworn statements.

We find that the uncontroverted documents filed are sufficient to comply with

our Order and together with the other documents in the record establish that Club Ecuestre El Comandante was merely the name by which the corporate entity Club Ecuestre Metropolitano, Inc. was known during the time material to this claim.[2/] If plaintiffs had presented supplemental documents to controvert defendants' assertions or if they had filled the obvious gap in their argument--the lack of any showing as to just how this new name was fraudulently used to shield defendants from liability--this Court would have been inclined to rule otherwise. A different situation would have ensued if plaintiffs had alleged the fraudulent use of the name to avoid liability since then whatever issues that existed could have been on a material fact. See: Hahn v Sargent, 523

Appendix B

F 2d 461, 464 (1st Cir.) cert. denied 425 US 904 (1975). Similarly, allegations as to the possibility of Club Ecuestre El Comandante being used as an alter ego to divert or bleed the assets of Club Ecuestre Metropolitano, Inc. would have also prompted a different approach. However, such allegations are absent from the record. If plaintiffs are concerned on account of statements that Club Ecuestre Metropolitano, Inc. a/k/a Club Ecuestre El Comandante ceased to exist in 1976, they should voice their concern through the proper procedural mechanism and applicable sections of Puerto Rico's Law of Corporations. The mere reliance on their unsupported allegations and their technical arguments as to the form of defendants' documents without revealing even the slightest inkling of a controversy

on a material fact that could affect the issues as signaled by our Order of February 10, 1982[3/] is insufficient to defeat the thrust of defendants' motion for summary judgment and supporting documents; on the burden of a party opposing a summary judgment see: First Bank of Arizona v Cities Service Co., 391 US 253, 289 (1968).

For the reasons aforementioned and stated in our Opinion and Order of February 10, 1982, we find that there exist no genuine issues as to the fact that Club Ecuestre Metropolitano, Inc. continued its corporate existence as Club Ecuestre El Comandante. Both are and have always been one and the same corporate entity. It is, therefore, understood that all appearances, court notifications, summons and the like made in the past and hereon to

or by Club Ecuestre Metropolitano, Inc. shall be understood to also refer to Club Ecuestre El Comandante and vice versa. To avoid further confusion on this matter it is hereby ORDERED that every time one of the parties mentions Club Ecuestre Metropolitano, Inc. or Club Ecuestre El Comandante they shall include both names connected by the initials of the phrase also known as (a/k/a). If there should be multiple references to these names in a particular writing it is suggested that after initial identification they be referred to simply as Club Ecuestre.

Having determined that the corporate entity existed at the time of the accident and the ensuing limits of personal liability of its members that this entails, our ruling today dismisses the complaint

only as to the defendants that were included for the sole reason of being members of the allegedly unincorporated association. These are: Ramon J. Abarca, Carlos Alvarez, Jr., Irving Herman Bassin, Francisco Badrena, Santiago Coll Camalez, Arturo Costa, Noel Jelaplace Gerard, Miguel F. Esteva, Hector Gandia, Jose G. Gonzalez, Jaime Gonzales Oliver, Enrique Grau Esteban, Raymond Hernandez, Donald James Kevane, Claude Grenet, Patrick H. Gray, Hanny Stubbe Lopez, Carlos Matos, Rodolfo Mediavilla, Frank A. Molther, Allen Rapaport, Nelson Lugo Rigau, Idalie Santaella, Hilda Soltero, John F. Tomlinson, Jose D. Targa, Arturo Villar, Jose Zequeira, Robert Wilson, David A. Roeske, William Naveira, Agustine Celaga and John Doe one through one hundred. The other defendants[4/] remain in the action

since their liability is based on other reasons and not solely because of their membership. The remaining defendants are: Federacion Puertorriquena de Deportes Ecuestres, Inc., the Municipality of San Juan, British American Assurance Co., Wilfredo Perez, German Rieckehoff, Pedro Ramos and Ivan Sanchez (in their personal responsibility as organizing the horse show) Lucy Mangual and Valerie Rhodes (the owner and rider of the injurious horse), Stephany Zachary (designer of the jumping course for the show) and Club Ecuestra Metropolitano, Inc. a/k/a Club Ecuestre El Comandante.

II - The inclusion of the members of the Puerto Rico Equestrian Federation as defendants:

Plaintiffs included as defendants all

members (also the same members of the allegedly unincorporated Club Ecuestre El Comandante upon whom we have dismissed the complaint on part 1 of this Order) of an allegedly unincorporated association called Puerto Rico Equestrian Federation. Plaintiffs also joined as defendant the corporation Federacion Puertorriquena de Deportes Ecuestres, Inc. Defendants indicate that the Court's order of February 10, 1982 did not address the question of whether to also dismiss the action against the members of the Puerto Rico Equestrian Federation since they allege that Puerto Rico Equestrian Federation is merely the English translation of Federacion Puertorriquena de Deportes Ecuestres, Inc. (Federacion). The Court did not address this matter because we were under the impression that plaintiffs

had accepted that the Puerto Rico Equestrian Federation was merely another name for the Federacion Puertorriquena de Deportes Ecuestres, Inc. and had abandoned this part of their cause of action. See: proposed pretrial order stipulation of fact number five (5) submitted by plaintiffs and filed on January 1981. Also, it should be noted that defendants' joint motion for summary judgment does not address that matter. It is only in their reply to plaintiffs' opposition that they make reference to this question. However, considering plaintiffs' silence on this matter, their proposed stipulations of facts, and in order to avoid additional delay we grant plaintiffs ten (10) days to inform the Court of the status of this matter. If plaintiffs wish to continue their action

against the members of the so-called Puerto Rico Equestrian Federation, defendants, may, if they so wish, file motion for summary judgment (on this matter) in accordance with our ruling on the question of the liability of the Club members of Club Ecuestre Metropolitano, Inc. a/k/a Club Ecuestre El Comandante.[5/]

III - The deposition of Valerie Rhodes:

Plaintiffs moved for a deposition of defendant Valerie Rhodes. Defendants hav- opposed the taking of said deposition on grounds that discovery proceedings have already concluded and because plaintiffs have not justified why after almost eight years of proceedings they now require this deposition. They contend that if the Court permits this deposition it should

also permit discovery for all parties. The Court believes this matter is best solved by the Magistrate. The case is hereby referred to the Magistrate for setting of a discovery conference in order for him to determine whether to permit the deposition and/or additional discovery to all parties.

IV - The substitution of deceased defendant Wilfredo J. Perez:

Plaintiffs contend that they have approached counsel for deceased defendant Wilfredo J. Perez to find out who are the heirs or successors of this defendant in order to substitute them per Rule 25(a)(1) Fed. R. Civ. P. Plaintiffs, however, have not informed the Court of the results of said approach as mentioned in their

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Motion Requesting Additional Time filed March 2, 1982. The Court hereby ORDERS counsel for the deceased defendant to inform plaintiffs' local counsel within the next 15 days the information requested, if known. Plaintiffs shall then move for the substitution of this party and for the proper type of service of summons depending on the information given by decedent's counsel.

SO ORDERED.

At San Juan, Puerto Rico, on August 26, 1982.

S/ Carmen Consuelo Cerezo
CARMEN CONSUELO CEREZO
United States District Judge

c/c: [illegible], Esq./
[illegible], Esq./
O.B.
8-26-82
[illegible]

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FOOTNOTES

1/ Rule 56(e) Fed. R. Civ. P. in its pertinent part states:

> "The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. ..."

A hasty dismissal of the summary judgment without scrutinizing the issues and specific controversies would have been an easier approach yet it would have only contributed to delaying this case. We are of the belief that one of the main reasons why this simple negligence action has taken so long is the numerous defendants included as parties on a mere technicality.

2/ We notice that plaintiffs continue to misconstrue the question as one of determining the existence of an additional de facto or successor corporation. Again we indicate for plaintiffs' benefit that there is no new corporate entity, there is only one corporate entity operating under a slightly different name. This was the issue they should have directed their energies at controverting.

3/ Plaintiffs instead of offering some document that would enable the Court to at least infer that the new name of the corporation was being used to deprive them

of some right, decided to file a series of motions objecting to the form of defendants' documents. The last of the motions was filed on May 24, 1982.

4/ The previously named defendants however, remain as members of the allegedly unincorporated association Puerto Rico Equestrian Federation until this matter is solved, see: Part 2 of this Order.

5/ We are aware that this will probably entail a rehash of the arguments and documents previously presented but we cannot rule otherwise for counsel have not placed us in a position to determine this point.

Appendix B

Partial Judgment of Judge Cerezo dated August 26, 1982 Granting Partial Summary Judgment to 32 Individual Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
(CIVIL 74-447)

ELLEN HAWES, individually, and in representation of the minor MARIA CHRISTINA HAWES, ANNA FRANCISCA HAWES, individually, succession JOHN HAWES composed by MARIA CHRISTINA HAWES, represented by her mother ELLEN HAWES and ANNA FRANCISCA HAWES :

Plaintiffs :

vs :

CLUB ECUESTRE EL COMANDANTE, PUERTO RICO EQUESTRIAN FEDERATION, FEDERACION PUERTORRIQUERA DE DEPORTES ECUESTRES, INC., CLUB ECUESTRE METROPOLITANO, INC., MUNICIPALITY OF SAN JUAN, PUERTO RICO, BRITISH AMERICA ASSURANCE COMPANY, LUCY MANGUAL, individually and as parent and representative of the minor VALERIE RHODES, WILFREDO PEREZ, GERMAN RIECKEHOFF, PEDRO RAMOS, IVAN SANCHEZ, RAMON J. ABARCA, CARLOS ALVAREZ, JR., IRVING HERMAN BASSIN, FRANCISCO BADRENA, SANTIAGO COLL CAMALEZ, ARTURO COSTA, NOEL JELAPLACE GERARD, MIGUEL F. ESTEVA, HECTOR GANDIA, JOSE G. GONZALEZ, :

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JAIME GONZALEZ OLIVER, ENRIQUE GRAU ESTEBAN, RAYMOND HERNANDEZ, DONALD JAMES KEVANE, CLAUDE GRENET, PATRICK H. GRAY, HANNY STUBBE LOPEZ, CARLOS MATOS, RODOLFO MEDIAVILLA, FRANK A. MOLTNER, WILFREDO J. PEREZ, ALLEN RAPAPORT, NELSON LUGO RIGAU, IVAN SANCHEZ, IDALIE SANTAELLA, HILDA SOLTERO, JOHN F. TOMLINSON, JOSE D. TARGA, ARTURO VILLAR, JOSE ZEQUEIRA, ROBERT WILSON, DAVID A. ROESKE, WILLIAM NAVEIRA, AGUSTINE CELAGA, JOHN DOE ONE THROUGH JOHN DOE ONE HUNDRED, inclusive, and STEPHANY ZACHARY

Defendants

PARTIAL JUDGMENT

For the reasons stated in our Order of today and our Opinion and Order of February 10, 1982, partial judgment is hereby entered DISMISSING the complaint against the following defendants in their capacity as members of Club Ecuestre Metropolitano, Inc. a/k/a Club Ecuestre El Comandante: Ramon J. Abarca, Carlos

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Alvarez, Jr., Irving Herman Bassin, Francisco Badrena, Santiago Coll Camalez, Arturo Costa, Noel Jelaplace Gerard, Miguel F. Esteva, Hector Gandia, Jose G. Gonzales, Jaime Gonzales Oliver, Enrique Grau Esteban, Raymond Hernandez, Donald James Kevane, Claude Grenet, Patrick H. Gray, Hanny Stubbe Lopez, Carlos Matos, Rodolfo Mediavilla, Frank A. Molther, Allen Rapaport, Nelson Lugo Rigau, Idalie Santaella, Hilda Soltero, John F. Tomlinson, Jose D. Targa, Arturo Villar, Jose Zequeira, Robert Wilson, David A. Roeske, William Naveira, Agustine Celaga and John Doe one through one hundred.

SO ORDERED AND ADJUDGED.

At San Juan, Puerto Rico, on August

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26, 1982.

S/ Carmen Consuelo Cerezo
CARMEN CONSUELO CEREZO
United States District
Judge

1 s/c: [illegible], Esq.
[illegible], Esq.
O.B.
8-26-82
[illegible]

Appendix B

Motion and Order Granting Certificate Pursuant to FRCP 54(b) Permitting Appeal

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
(Civil No. 74-447 J.P.)

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ELLEN HAWES, et als.,

Plaintiffs,

-against-

CLUB ECUESTRE EL COMANDANTE,
et als.,

Defendants.

----------X

S I R S :

PLEASE TAKE NOTICE that, the plaintiffs hereby move the above-entitled court, based upon its order of August 26, 1982, granting partial summary judgment against plaintiffs and in favor of the following defendants in their capacity as members of Club Ecuestre Metropolitano, Inc. a/k/a

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Club Ecuestre El Comandante: Ramon J. Abarca, Carlos Alvarez, Jr., Irving Herman Bassin, Francisco Badrena, Santiago Coll Camalez, Arturo Costa, Noel Jelaplace Gerard, Miguel F. Esteva, Hector Gandia, Jose G. Gonzalez, Jaime Gonzales Oliver, Enrique Grau Esteban, Raymond Hernandez, Donald James Kevane, Claude Grenet, Patrick H. Gray, Hanny Stubbe Lopez, Carlos Matos, Rodolfo Mediavilla, Frank A. Molther, Allen Rapaport, Nelson Lugo Rigau, Idalie Santaella, Hilda Soltero, John F. Tomlinson, Jose D. Targa, Arturo Villar, Jose Zequeira, Robert Wilson, David A. Roeske, William Naveira, Agustine Celaga and John Doe one through one hundred, for a certificate pursuant to F.R.C.P. 54(b) certifying that:

(1) this Court has directed entry

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of a final judgment as to the parties dismissed from the lawsuit.

(2) that the Court has determined that there is no just reason for delay.

Dated: New York, New York
September 29, 1982

Yours, etc.,

Eleanor Jackson Piel
36 West 44th Street
New York, N.Y. 10036
(212) 575-0797

-and-

Demetrio Fernandez Quinones
P.O. Box A-Z
U.P.R. Station
Rio Piedras, P.R. 00931
(809) 764-0000 Ext. 2513

BY: S/ E. J. PIEL

TO: CLERK OF THE DISTRICT COURT
All Counsel
Valerie Rhodes and
Luz N. Mangual

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Order and Opinion of Judge Cerezo dated February 9, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
(CIVIL 74-447)

ELLEN HAWES, individually, and in representation of the minor MARIA CHRISTINA HAWES, ANNA FRANCISCA HAWES, individually, succession JOHN HAWES composed by MARIA CHRISTINA HAWES, represented by her mother ELLEN HAWES and ANNA FRANCISCA HAWES :

Plaintiffs :

vs :

CLUB ECUESTRE EL COMANDANTE, PUERTO RICO EQUESTRIAN FEDERATION, FEDERACION PUERTORRIQUENA DE DEPORTES ECUESTRES, INC., CLUB ECUESTRE METROPOLITANO, INC., MUNICIPALITY OF SAN JUAN, PUERTO RICO, BRITISH AMERICA ASSURANCE COMPANY, LUCY MANGUAL, individually and as parent and representative of the minor VALERIE RHODES, WILFREDO PEREZ, GERMAN RIECKEHOFF, PEDRO RAMOS, IVAN SANCHEZ, RAMON J. ABARCA, CARLOS ALVAREZ, JR., IRVING HERMAN BASSIN, FRANCISCO BADRENA, SANTIAGO COLL CAMALEZ, ARTURO COSTA, NOEL JELAPLACE GERARD, MIGUEL F. ESTEVA, HECTOR GANDIA, JOSE G. GONZALEZ, JAIME GONZALEZ OLIVER, ENRIQUE GRAU ESTEBAN, RAYMOND HERNANDEZ, :

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DONALD JAMES KEVANE, CLAUDE GRENET, PATRICK H. GRAY, HANNY STUBBE LOPEZ, CARLOS MATOS, RODOLFO MEDIAVILLA, FRANK A. MOLTHER, WILFREDO J. PEREZ, ALLEN RAPAPORT, NELSON LUGO RIGAU, IVAN SANCHEZ, IDALIE SANTAELLA, HILDA SOLTERO, JOHN F. TOMLINSON, JOSE D. TARGA, ARTURO VILLAR, JOSE ZEQUEIRA, ROBERT WILSON, DAVID A. ROESKE, WILLIAM NAVEIRA, AGUSTINE CELAGA, JOHN DOE ONE THROUGH JOHN DOE ONE HUNDRED, inclusive, and STEPHANY ZACHARY

Defendants

O R D E R

The matter now before this Court is a motion for summary judgment seeking dismissal of the action against all members of the Club Ecuestre El Comandante which were joined as defendants because plaintiffs did not find any registered corporation under that name at the State Department of Puerto Rico. The parties do not dispute that the horse show where the tragic event

occurred was sponsored by Club Ecuestre El Comandante ("Comandante"); that there is no corporate entity with that name registered at Puerto Rico's State Department; that on March 8, 1964 Club Ecuestre Metropolitano Inc. (Metropolitano) a non-profit corporation decided, by a meeting of its club members, to change its name to Club Ecuestre El Comandante; that Metropolitano's name did not appear on the program of the horse show, and that Metropolitano's corporate charter was never amended to reflect a name change as is required by Puerto Rico's Law of Corporations, P.R. Laws Ann. Tit. 14, Sec. 1801-1804.[1/]

1/ For a general summary of other facts related to this case but not pertinent to the present matter see: Hawes v Club Ecuestre El Comandante, 598 F 2d 698 (1st Cir. 1979).

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Defendants contend that the minutes of the meeting of Metropolitano's members and the affidavit of the corporation's Secretary at that time, establish that Comandante was simply the continuation of Metropolitano's corporate activities under an unauthorized name. Defendants argue that a failure to follow the statutory requirements of a corporate name change cannot be taken as an abandonment of Metropolitano's corporate attributes and limited liability. Plaintiffs contend that since Comandante appeared on the program as the sponsor of the event and there was no corporation registered under that name, then the members of Comandante Club should be each held personally liable to them.

Plaintiffs' argument is not focused within the context of the factual situation

and legal issues present in this case. After examining the record we find that the sole issue of law before us at this moment is whether Club Ecuestre El Comandante is an unincorporated club separate and unrelated to Metropolitano or simply the unauthorized name by which the corporate entity Club Ecuestre Metropolitano Inc. operated and sponsored the horse show.

Contrary to what plaintiffs allege we are not dealing here with a factual situation in which the doctrine of corporate estoppel could be properly invoked. The equitable principle reflected in P.R. Laws Ann. Tit. 14, Sec. 2205 would come into play when a person acts as a corporation and induces others to deal with him as a legal corporate entity. This type of false representation is the key element in

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supporting the application of the estoppel doctrine as recognized in the Puerto Rican statute. See generally Cranson v International Business Machines Corp., 200 F 2d 33 (Md. App. 1964) In the instant case, the defendants are not trying to shield Metropolitano's corporate liability. Since they allege that Metropolitano and Comandante are the same corporate entity they are accepting that whatever corporate liability is found on the part of Comandante due to its involvement as sponsor of the horse show will be attributed directly to Metropolitano. This fact tends to shift the issue here to an approach similar to the "piercing of the corporate veil" whereby Metropolitano/ Comandante's members would be held personally liable if plaintiffs can prove that

there was no real corporate entity under either of the two names. However, this is not plaintiffs' position and in examining the matter we find that they have not shown how they were misled by the use of an unauthorized name nor how this representation caused them harm in any way, elements that may urge an application of equitable estoppel principles. On the contrary, the fact that plaintiffs decided to join Club Ecuestre Metropolitano Inc. as defendant in the original complaint when such a name did not appear on the program of the horse show and in view of plaintiffs' counsel own sworn statement that there were three corporations with names similar to Club Ecuestre El Comandante in the State Department records yet, for unexplained reasons, he chose to join

only Club Ecuestre Metropolitano Inc., casts doubt on plaintiffs' ulterior motives in joining the Club members in their personal character and hints at the possibility that they may have had actual knowledge that Comandante and Metropolitano were the same corporate entity.

We find the doctrine mentioned in Aetna Life Ins. Co. v. Weatherhogg, 4 N.E. 2d 679 (Ind. App. 1936) applicable to the facts of this case. There the Indiana Appellate Court found that the members of a corporation that conducted business under an unauthorized name could not be held personally liable solely upon this fact. The Court noted that if there had been a change of name in conformity with Indiana law it "... would not have affected in any manner the identity of the corporation or

added to or detracted from its rights and obligations." Aetna, ante, at 684. Although the Court recognized that there may be circumstances that justify a conclusion that "a change of name amounts to a destruction of the corporation." Id. citing Pilsen Brewing Co. v Wallace, 125 NE 714 (Ill. App. 1919) and Cincinnati Cooperage Co. v Bate, 26 S.W. 538 (Ky. 1894), it determined that the unauthorized use of the new name did not eliminate the corporate entity's existence but rather constituted a mere continuation of its business under another name:

> The evidence discloses in the instant case that the stockholders, officers and agents and the business of both the Fort Wayne Transfer Company and the Fort Wayne Transfer and Yellow Cab Company were the same, and that the officers, directors and members of the Fort Wayne Transfer Company

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> continued in the same business of the Fort Wayne Transfer Company after it had added the words "Yellow Cab" to its corporate name, and at the time of incurring the debt of appellant sued on herein, the appellees were carrying on the same business which they had formerly carried on under the corporate name of Fort Wayne Transfer Company ... Aetna, ante at 684.

Having so framed the legal issue, we must examine the material facts that defendants allege to be uncontroverted to see if they, as moving parties, have met the requirements of a motion for summary judgment. See generally, Adickes v S.H. Kress & Co., 398 US 144 (1970). This burden placed upon defendant is particularly evident considering the fact that defendants' two previous motions for summary judgment were denied since the Court concluded that there existed controversies on material issues of fact.

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We find that the minutes of the meeting of Metropolitano Inc.'s members decision to change the name, properly authenticated by affidavit have not been contested by plaintiffs. In fact, plaintiffs have not specifically contested that Comandante was but another name for the same operation as declared in the affidavit in support of summary judgment and by defendant German Rieckehoff's deposition. Plaintiffs' position has remained circumscribed to their contention that since Comandante does not appear in the Registry of Corporations this is determinative of its status as an unincorporated group of persons. In the context of all the circumstances to so view the issue is to misconstrue it. The question lies rather on the effect of the use by a corporation of

of an unauthorized name. The facts, therefore, would have to establish that Comandante was simply the new name that Metropolitano adopted to continue its operations. Though defendants' documentary evidence in support of the summary judgment supports this fact, we notice that the affidavit by the Secretary of Metropolitano Inc. at the time the name was changed does not expressly state the affiant's total period of involvement with the corporation nor is any evidence presented as to Metropolitano Inc.'s operations or how the corporation was referred to from the time of the name change to the date of plaintiffs' injury. A correction of these slight deficiencies by supplemental documentary evidence shall place the Court in a more adequate position

to adjudicate this important matter. In view of the drastic effect a summary dismissal may have on a cause of action and in order to accelerate the proceedings in this long overdue case,[2/] both parties are allowed to offer supplemental documentary evidence in conformity with the position of law stated in Aetna Ins., supra, and adopted in this Order. Rule 56(e) FRCP. See also: Gordon v Watson, 622 F 2d 120 (5th Cir. 1980).

Defendants are hereby ORDERED to produce within twenty days, after notice, properly authenticated supplemental documentary evidence and affidavits to establish the alleged continuity of operations of Metropolitano Inc. under the name of

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2/ Plaintiffs filed this complaint on April 17, 1974.

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Comandante. Specifically, the Court is interested in examining Metropolitano Inc.'s dealings with third parties and its operations from 1964 up to the time when plaintiffs' injury occurred. Failure to produce said documents in the time ordered may result in denial of the motion for summary judgment. Defendants shall notify plaintiffs with copies of the documents filed in compliance with this Order. Plaintiffs shall then have twenty days to state their position and present supplemental documents, if so desired.

SO ORDERED.

At San Juan, Puerto Rico, on February 9, 1982.

S/
CARMEN CONSUELO CEREZO
United States District
Judge

APPENDIX C

Order of Court of Appeals for the First Circuit Denying Petition for Rehearing and Suggestion for Rehearing En Banc

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 82-1742

JOHN HAWES, ET AL.,
Plaintiffs, Appellants,

v.

CLUB ECUESTRE EL COMANDANTE, ET AL.,
Defendants, Appellees.

Before CAMPBELL, Chief Judge.
COFFIN, BOWNES, & BREYER, Circuit Judges,
and RE*, Judge.

ORDER OF COURT

Entered September 9, 1983

Upon consideration of "Petition for Rehearing and Suggestion for Rehearing En

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* Of the United States Court of International Trade, sitting by designation.

Banc", which document was submitted to the members of the panel and to the judges of the Court who are in regular active service; and

The judges of the panel having voted to deny the petition for rehearing, and the judges of the Court who are in regular active service having voted against rehearing en banc,

It is ordered that said application for rehearing en banc is hereby denied.

By the Court:

Francis P. Scigliano

Clerk.

APPENDIX D

Rule 56 of Federal Rules of Civil Procedure Providing for Summary Judgment

Rule 56. Summary Judgment

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, includ-

ing the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963.)

Appendix D

Article 1, §10 of the United States Constitution

§ 10. Restrictions upon powers of states

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Appendix D

Fourteenth Amendment to the United States Constitution

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix D

Title 14, Laws of Puerto Rico -- Private Corporations: General Corporation Law -- 1976, as amended

(All the following sections are part of Title 14)

§ 451. Filing of charters of domestic corporations in Office of Secretary of Treasury; licenses of foreign corporations from Secretary of State; fees; penalties

(1) Every corporation, joint-stock or limited liability company or association heretofore organized, chartered or incorporated under the laws of Puerto Rico, and every such association, corporation or company hereafter chartered or incorporated in Puerto Rico, before proceeding to transact business, shall file in the Office of the Secretary of the Treasury of Puerto Rico an authenticated copy of its charter or articles of incorporation, together with a statement, verified by the oath of the president of such corporation and attested by a majority of its administration or board of directors, stating the name or title of such corporation, its domicile, the kind of business engaged in, the branches which may have been established, and the commercial registry in which the articles of association or incorporation have been recorded.

(2) Except for nonpecuniary profit associations, it shall be unlawful for any corporation, joint-stock or association not incorporated under the laws of Puerto Rico to do business therein until such corporation, company or association shall have secured from the Secretary of State of Puerto Rico a formal license to transact business therein; and no such license shall be issued by said Secretary of State until such corporation, company or association shall have paid the license fee hereinafter specified; Provided, That a foreign corporation may transact only such business or have only such powers as a domestic corporation of like nature transacts and has in Puerto Rico, and to the extent authorized the latter by local

laws; and the license issued by the Secretary of State of Puerto Rico shall set forth this restriction in its context.

(3) It shall be the duty of such corporations, companies or associations to renew their licenses annually, on or before the first day of July of each year; but no such renewal shall be issued by the Secretary of State until such companies, corporations or associations shall have respectively paid the license fees hereinafter specified.

(4) For the issue and renewal of every license issued under the provisions of this section, the sum of twenty-five (25) dollars shall be paid to the Secretary of the Treasury of Puerto Rico through the official of the Department of State designated by the Secretary of the Treasury as collector or deputy collector.

(5) The Secretary of State shall report all violations of this section to the prosecuting attorney of the proper part of the Superior Court of Puerto Rico, who shall at once proceed to prosecute the corporation, company, association, officer or agent so violating the same; and, upon conviction thereof, such corporation, company, association, or its officers or agents, shall forfeit to The People of Puerto Rico the sum of four hundred (400) dollars for any such violation.—Political Code, 1902, § 353; Mar. 10, 1904, p. 167, § 41; Mar. 6, 1913, No. 11, p. 55; Mar. 7, 1951, No. 7, p. 14; July 24, 1952, Nos. 6, 11, pp. 10, 30, eff. July 25, 1952.

§ 1101. Incorporators; purposes of corporation

Any number of natural persons, not less than three, may establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate objects or purposes under the provisions of and subject to the requirements of this subtitle, excepting for such purposes as are excluded from the operation of this subtitle by existing provision of law or by specific exclusion hereafter adopted, upon making and filing a certificate of incorporation in writing. Any certificate of incorporation duly recorded under this subtitle shall be subject to alteration, amendment or repeal by the Legislative Assembly.—Jan. 9, 1956, No. 3, p. 197, § 101.

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§ 1102. Certificate of incorporation; contents; definition

(a) The certificate of incorporation shall set forth—

(1) The name of the corporation, which shall contain one of the words "corporation", "corp.", or "inc.", or words or abbreviations of like import in other languages (provided they are written in Roman or English characters or letters), and which shall be such as to distinguish it upon the records in the office of the Department of State from the names of other corporations organized or authorized to do business in Puerto Rico under the laws of this Commonwealth;

(2) The name of and street address in the Municipality in which its principal office or place of business is to be located in this Commonwealth, and the name of its resident agent who may be an officer of the corporation; which agent may be either a natural or juridical person;

(3) The nature of the business, or objects or purposes to be transacted, promoted or carried on; and whether or not the corporation is to be carried on for pecuniary profit;

(4) If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and (a) the par value of each of such shares, or (b) a statement that all such shares are to be without par value; or, if the corporation is to be authorized to issue more than one class of stock, the total number of shares of all classes of stock which the corporation shall have authority to issue and (a) the number of the shares of each class thereof that are to have a par value and the par value of each share of each such class, and/or (b) the number of such shares that are to be without par value, and (c) a statement of all or any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by the provisions of section 1501 of this title in respect of any class or classes of stock of the corporation and the fixing of which by the certificate of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by

resolution or resolutions any thereof that may be desired but which shall not be fixed by the certificate. In each case the certificate of incorporation shall also set forth the minimum amount of capital with which the corporation will commence business, which shall not be less than $1,000. The foregoing provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership of such corporations shall likewise be stated in the certificate of incorporation or the certificate may provide that the conditions of membership shall be stated in the by-laws;

(5) The names and places of residence of each of the incorporators;

(6) Whether or not the corporation is to have perpetual existence, and if not, the time when its existence is to commence and the time when its existence is to cease.

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, and subject to any limitations contained in the Constitution of the Commonwealth of Puerto Rico the certificate of incorporation may also contain any or all of the following matters—

(1) Any provision which the incorporators may choose to insert for the management of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class of the stockholders, or, in the case of a corporation which is to have no capital stock, of the members of such corporation, and any provisions authorizing the directors to enter into contracts for the management of the business of the corporation for terms not exceeding three years, if such provisions are not contrary to the laws of this Commonwealth;

(2) Such provisions as may be desired limiting or denying to the stockholders the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes;

(3) Provisions requiring for any corporate action the vote of a larger proportion of the stock or any class thereof than is required by this subtitle.

(c) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section and to any matters set forth in the certificate of incorporation pursuant to

subsection (b) of this section, the certificate of incorporation may also contain a provision that the corporation shall have not more than a stated number of stockholders at any one time which stated number shall be not more than eleven (11). A Certificate of Incorporation containing such a provision may, notwithstanding any of the provisions of chapter 104 or chapter 107 of this subtitle, contain in addition to any provisions inserted in accordance with subsection (b) of this section, a provision or provisions that the business of the corporation shall be managed and conducted by its stockholders who may then exercise the powers and functions of a board of directors and, if desired, a provision or provisions setting out the manner of such conduct by them or any one or more of them, and such provision may empower the stockholders to authorize an officer or officers or an agent or agents to manage and conduct the business of the company. Such authorization shall be given by instrument in writing signed by all of the stockholders and may contain such terms, provisions and conditions and may grant such limited or unlimited power and authority as the stockholder or stockholders may choose to insert. The stockholders may from time to time alter the terms, provisions and conditions of any such authorization by like instrument in writing; Provided, however, That any such authorization shall be revocable by instrument in writing signed by the holders of a majority of the shares, from and after three calendar years from the date of its execution unless an earlier date of revocability shall have been fixed in such authorization. Whenever and so long as a corporation whose certificate of incorporation limits the number of its stockholders pursuant to this subsection (c) shall at any time have only one stockholder, such stockholder shall have full power to manage and conduct the business and affairs of the corporation.

If a corporation whose certificate of incorporation limits the number of its stockholders pursuant to this subsection (c) shall at any time come to have more than the stated number of stockholders set forth in its certificate of incorporation, such corporation shall within four months from the date at which the number of stockholders came to exceed said stated number either:

(1) arrange to reduce the number of its stockholders to not more than the stated number provided in its certificate, or

(2) amend the certificate to increase to not more than eleven (11) the number of stockholders permitted, or

(3) amend its certificate and its by-laws if any, eliminating the provision limiting its stockholders to a stated number, and making provision for directors and officers in conformity with the provisions of chapter 104 of this subtitle.

If such corporation shall fail either to arrange for such reduction of the number of its stockholders or to amend its certificate of incorporation in conformity with the provisions of this subsection (c) or of chapter 104 of this subtitle, the stockholder or stockholders, agent or agents, director or directors, officer or officers thereof who shall manage and conduct the business of the corporation shall from and after the expiration of said period of four months and thereafter until such reduction of the number of its stockholders shall have taken effect or until such amendment shall have become effective, be jointly and severally liable for the debts and obligations of the corporation. The provisions of section 2206 of this title shall not apply to any corporation whose certificate of incorporation contains a provision pursuant to this subsection (c) that it shall not have more than a stated number of stockholders.

(d) The term "certificate of incorporation" as used in this subtitle, unless the context otherwise requires, includes all certificate[s] filed pursuant to sections 1103, 1302, 1303, 1304, 1305, 1501, 1801, 1802, 1803, and 1804 of this title, and any agreement of consolidation or merger filed pursuant to sections 1901 and 1902 of this title.—Jan. 9, 1956, No. 3, p. 197, § 102.

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§ 1103. Execution, filing and recording of certificate of incorporation

(a) The certificate of incorporation shall be signed by each of the incorporators and shall be sworn to before any officer authorized by the laws of this Commonwealth to take sworn statements to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth.

(b) The certificate shall be filed and recorded in the office of the Department of State, where it shall be subject to inspection by the public.—Jan. 9, 1956, No. 3, p. 197, § 103.

§ 1104. Composite certificate of incorporation

The Department of State shall prepare and furnish upon request therefor a certified composite certificate of incorporation which shall contain only such provisions as are in effect at the time of certification by reason of the certificates and agreements referred to in subsection (d) of section 1102 of this title. The Department of State shall make in each case such reasonable charge therefor as it deems proper.—Jan. 9, 1956, No. 3, p. 197, § 104.

§ 1105. Certificate of incorporation; evidence

A copy of a certificate of incorporation or a composite certificate of incorporation certified by the Secretary of State under his hand and seal of office, stating that it has been recorded, shall be evidence in all courts and in any administrative proceeding in this Commonwealth.—Jan. 9, 1956, No. 3, p. 197, § 105.

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§ 1106. Commencement of corporate existence

Upon making the certificate of incorporation and causing the same to be filed and recorded as provided in section 1103 of this title, and paying any tax required by law, the persons so associating, their successors and assigns, shall, from the date of such filing, be and constitute a body corporate, by the name set forth in the certificate, subject to dissolution as provided in this subtitle. —Jan. 9, 1956, No. 3, p. 197, § 106.

§ 1701. Place of stockholders' and directors' meetings

In all cases after the first meeting of the incorporators, the meeting of the stockholders of every corporation shall be held annually at its principal office in this Commonwealth, unless [an]-other place is designated in the bylaws. The stockholders and directors may, however, hold their meetings and have in addition to such principal office an office or offices outside of this Commonwealth, as provided for in the bylaws.—Jan. 9, 1956, No. 3, p. 197, § 701; June 9, 1956, No. 32, p. 94, § 1(b), eff. June 9, 1956.

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§ 1802. Amendment of certificate of incorporation after payment of capital or where corporation has no capital stock

(a) Any corporation of this Commonwealth, whether created by special act or general law, or any corporation created under the provisions of this subtitle, may, from time to time, when and as desired, amend its certificate of incorporation by—

(1) Addition to its corporate powers and purposes, or diminution thereof, or both; or

(2) Substitution of other powers and purposes, in whole or in part, for those prescribed by its certificate of incorporation; or

(3) Increasing or decreasing its authorized capital stock or reclassifying the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or

(4) Changing its corporate title; or

(5) Making any other change or alteration in its certificate of incorporation that may be desired.

Any or all such changes or alterations may be effected by one certificate of amendment.

Every certificate of incorporation as so amended, changed or altered, shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment.

(b) Whenever issued shares having par value are changed into the same or a greater or less number of shares without par value, whether of the same or of a different class or classes of stock, the aggregate amount of the capital of the corporation represented by such shares without par value shall be the same as the aggregate amount of capital represented by the shares so changed; and whenever issued shares without par value are changed into other shares without par value to a greater or less number, whether of the same or of a different class or classes, the amount of capital represented by the new shares in the aggregate shall be the same as the aggregate amount of capital represented by the shares so changed.

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(c) The certificate of amendment of any certificate of incorporation effecting any change in the issued shares of the corporation shall set forth that the capital of the corporation will not be reduced under or by reason of the amendment.

(d) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner—

(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and calling a meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment. The meeting shall be called and held upon such notice as the certificate of incorporation or by-laws of the corporation shall provide, or, in the absence of such provision, upon notice thereof to each stockholder so entitled to vote, either delivered to such stockholder or mailed to him, at his post-office address, if known, at least ten days before the date fixed for the meeting. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the stockholders entitled to vote, in person or by proxy, shall be taken for and against the proposed amendment, which vote shall be conducted by two judges, appointed for the purpose either by the directors or by the meeting. The judges shall decide upon the qualifications of voters, and accept their votes, and when the vote is completed, count and ascertain the number of shares voted respectively for and against the amendment, and shall declare whether the natural or juridical persons holding the majority of the voting stock of the corporation (or of each class of stock entitled to vote thereon, when such vote is to be taken by classes) have voted for or against the proposed amendment; and shall make out a certificate accordingly, stating the number of shares of stock, issued and outstanding and entitled to vote thereon, and the number of shares voted for and the number of shares voted against the amendment respectively, and shall subscribe and deliver the certificate to the secretary of the corporation. If it appears by the certificate of the judges that the natural or juridical persons holding the majority of the stock of the corporation entitled to vote (or of each class of stock when such vote is to be taken by classes) have voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly

adopted in accordance with the provisions of this section shall be made under the seal of the corporation and signed by its president or a vice-president, and its secretary or an assistant secretary and the president or such vice-president shall acknowledge the certificate before an officer authorized by the laws of this Commonwealth to authenticate signatures. The certificate, so executed and acknowledged, shall be filed and recorded in the office of the Department of State; or if the corporation shall not have been created under this subtitle or shall have been created by special act, then the certificate shall be recorded in the office in which the original certificate of incorporation was filed or recorded. Upon filing and recording the same, the certificate of incorporation of the corporation shall be deemed to be amended accordingly. If any proposed amendment would alter or change the preferences, special rights or powers given to any one or more classes of stock by the certificate of incorporation, or would affect such class or classes of stock, or would increase or decrease the amount of the authorized stock of such class or classes of stock, or would increase or decrease the par value thereof, then the holders of the stock of each class of stock so affected by the amendment shall be entitled to vote as a class upon such amendment, whether by the terms of the certificate of incorporation such class be entitled to vote or not; and the affirmative vote of a majority in interest of each such class of stock so affected by the amendment shall be necessary to the adoption thereof, in addition to the affirmative vote of a majority of all other stock entitled to vote thereon. The amount of the authorized stock of any such class or classes of stock may be increased or decreased by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote, if so provided in the original certificate of incorporation or in any amendment thereto which created such class or classes of stock or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(2) If the corporation has no capital stock, then the board of directors, managers, trustees, or the governing body thereof shall pass a resolution declaring that every addition, change or alteration is advisable, and if at a subsequent meeting, held not earlier than 15 days and not later than 30 days from the meeting at which such resolution has been passed, two-thirds of the whole number of the

board of directors, managers, trustees, or the governing body, shall vote in favor of such amendment, addition, change or alteration, a certificate thereof shall be signed by the president or a vice-president and the secretary or assistant secretary (or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and the secretary or assistant secretary of a corporation) under the corporate seal, acknowledged by the president or vice-president (or by such officer as may be duly authorized to exercise the duties ordinarily exercised by a president or vice-president) before any officer authorized by the laws of this Commonwealth to authenticate signatures to be the act and deed and certificate of such corporation, and such certificate acknowledged as aforesaid, together with the assent of two-thirds of the whole number of the members of the board of directors, managers, trustees, or governing body in writing, shall be filed and recorded in the office of the Department of State; or, if the corporation shall not have [been] created under this subtitle or shall have been created by a special public act, then the certificate shall be recorded in the office in which the original certificate of incorporation was filed or recorded, and upon filing and recording the same, the certificate of incorporation shall be deemed to be amended accordingly. The certificate of incorporation of any such corporation without capital stock may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event only one meeting of the board of directors, managers, trustees or the governing body thereof shall be necessary, and such proposed amendment shall be submitted to the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof, a certificate evidencing such amendment shall be filed and recorded in the same form and manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of stock corporation.—Jan. 9, 1956, No. 3, p. 197, § 802.

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§ 2301. Domestic corporations; annual reports; duty to keep books and other documents in Puerto Rico

Any corporation created under the laws of this Commonwealth and doing business in Puerto Rico, shall file in the office of the Secretary of the Treasury, a report authenticated by the signature of the president, vice-president and of the treasurer or assistant treasurer, and attested by a certified public accountant, licensed by the Commonwealth of Puerto Rico, who is neither a stockholder nor an employee of such corporation, no later than April 15 of each year. The report shall contain (1) a balance sheet prepared in accordance with generally-accepted accounting standards, showing the financial condition of the corporation at the close of operations; (2) a general balance sheet as shown in the accounting-books as of the preceding January 1; and (3) a profit and loss statement for the last operating year of the corporation, and such other information as may be required by the Secretary of the Treasury of Puerto Rico. The general balance sheet as of January 1 shall not be required when the corporation closes its operations as of the preceding December 31.

A list of the names and addresses of all the directors and officers of the corporation, and the expiration dates of their terms of office, shall be included with the aforesaid report.

Every one of said corporations shall file in the office of the Secretary of State, a report authenticated by the signature of the president or the vice-president and of the treasurer or the assistant treasurer, no later than April 15 of each year. The report shall contain: (1) a balance sheet prepared in accordance with generally-accepted accounting standards, showing the financial condition of the corporation at the close of its operations, duly verified and attested by a certified public accountant, licensed by the Commonwealth of Puerto Rico, who is neither a stockholder nor an employee of such corporation; (2) a list of the names and addresses of all the directors and officers of the corporation who are holding office on the date the report is rendered, and the expiration dates of their respective terms of office; and (3) such other information as may be required by the Secretary of State of Puerto Rico. This report shall include an internal-revenue voucher for the sum of one hundred (100) dollars for filing fees.

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Failure to pay this fee shall be sufficient cause to declare the certificate of incorporation cancelled, as a matter of law, as soon as the Secretary of the Treasury certifies to the Secretary of State that said corporation is not in arrears in the payment of its taxes.

Any corporation created under the laws of the Commonwealth of Puerto Rico shall keep and maintain in Puerto Rico such accounting books, documents and records (including inventory records) as may be necessary to:

(1) clearly establish the amount of the gross income, and deductions, credits and other details concerning operations within and without Puerto Rico, that should be included in the income tax returns rendered to the Commonwealth, and (2) clearly show the amount of the investment within and without Puerto Rico, the property owned by the corporation, and the amount of capital invested in its business operations within and without Puerto Rico.—Amended June 7, 1977, No. 45, p. 94, § 1, eff. June 7, 1977.